theless if right-minded persons would think that, in the circumstances, there was a real likelihood of bias on his part, then he should not sit. ..... There must be circumstances from which a reasonable man would think it likely or probable that the justice, or chairman, as the case may be, would, or did, favour one side unfairly at the expense of the other. The court will not enquire whether he did, in fact, favour one side unfairly. Suffice it that reasonable people might think, he did. The reason is plain enough. Justice might be rooted in confidence; and confidence is destroyed when right-minded people go away thinking: 'The judge was biased.' "

Applying the above test in considering whether there is a likelihood of bias in this case, I considered that in view of what has transpired since September 1983, the impression which might be created, to use the words of Abdoolcader J. (as he then was) in the Penang case of *Manokaran and Another* v. *Public Prosecutor*[8], "in the mind of the disinterested man or woman on the Jelutong omnibus", or if I might add, if reasonable and fair-minded persons sitting in the Kelang Magistrate's Court and following the proceedings, might question or doubt the fariness of the trial and think that there was a real likelihood of bias, and might go away thinking "The magistrate was biased", then it would be preferable in the circumstances that the magistrate concerned should not sit further to hear the case. Although the learned deputy pointed out that twenty days have been taken up so far in the hearing of this case, yet I think some loss of judicial time would not be too high a price to pay in order to maintain confidence in the administration of justice in this country. In all the circumstances of the case, I therefore allowed the application and ordered that the case be tried *de novo* before another magistrate in the Kelang Magistrate's Court.

Application allowed.

Solicitors: *Syarikat Davidason.*

NG SONG LUAK v. PUBLIC PROSECUTOR

[A.Cr.J. (Yusoff Mohamed J.) October 31 & November 10, 1984]
[Johore Bahru – Criminal Appeal No. 15 of 1982]

Criminal Law & Procedure – Charge – Defective charge – Whether facts of case support charge of conspiracy – Penal Code (F.M.S. Cap. 45), ss. 120A & 120B.

Penal Code, ss. 120A & 120B – Robbery – Charge – Defective.

This was an appeal from the conviction and sentence by the learned President of the Sessions Court on a plea of guilty by the accused.

The records showed that,

(1) the written facts of the case submitted to the learned President upon the accused pleading guilty to the charge, were not read and explained to the appellant as they should have been;

(2) that the learned President had himself not read or examined the facts of the case to see whether they were conformable with the law and in support of the charge.

Held: allowing the appeal: (1) it was clear from the recorded facts that both the dates and the facts of the case did not support the charge of conspiracy;

(2) even if the defective charge was not fatal and did not amount to a failure of justice there were too many other unsatisfactory features in this case which if allowed uncorrected would have caused injustice to the appellant who was then not represented by counsel.

Cases referred to:

(1) *Public Prosecutor* v. *Leong Yoon Meow* [1953] M.L.J. xxxv.

(2) *Abdul Salam* v. *Public Prosecutor* [1955] M.L.J. 116.

CRIMINAL APPEAL.

R.K. Menon for the appellant.

Chua Ming Hung (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Yusoff Mohamed J.: The appellant pleaded guilty to a charge under section 120 B of the Penal Code and was sentenced to five years' imprisonment.

The charge reads: –

"That Liew Yoon Choy and Ho Chee Kuan on October 11, 1980 at about 10.15 a.m. at Chai Seng Goldsmith No. 106, Jalan Trus, in the district of Johor Bahru, in the State of Johor, committed the offence of armed robbery under section 392/397 Penal Code, and that you on the same day and time at Jalan Trus, Johor Bahru conspired with the said persons Liew Yoon Choy and Ho Chee Kuan, as a result of your conspiracy the said offence was completed, and that you have thereby committed an offence punishable under section 392/397 Penal Code, to read together with section 120B of the Penal Code."

It is apparent that the charge does not follow the definition of the offence of conspiracy as defined under section 120A of the Penal Code. The section defines criminal conspiracy as two or more

persons agreed to do or cause to be done an illegal act to *wit*, armed robbery in this case.

It is obvious that this charge was not referred to the learned Deputy Public Prosecutor who would normally read the draft charge submitted by the Police Prosecutor to see whether it is in conformity with the law under which the appellant was charged. It is also probable that the learned President had not examined the relevant law under which the charge was framed before he accepted the plea of guilty from the appellant.

In *Public Prosecutor* v. *Leong Yoon Meow* [1] and in *Abdul Salam* v. *Public Prosecutor*[2] – practical guidance on the method of framing the charge has been drawn by Justice Thomson (as he then was) for guidance of learned Presidents, Magistrates and Police Officers. I would say that this guidance is still relevant and should be observed by all concerned.

The record shows that upon the appellant pleading guilty to the charge, written facts of the case were submitted to the learned President, but there is no indication in the record that these facts were read and explained to the appellant. There is also no record indicating that the learned President has himself read and examined the facts of the case to see whether they were conformable with the law and in support of the charge. These might have been done as emphatically explained by the learned President, Sessions Court. But the record must speak for itself.

Upon looking at the written facts exhibited in the record, it is observed that before September 10, 1980 (not on October 11, 1980 as referred to in the charge), the appellant was seen by Loy Cheng Pong @ Ah Soh to discuss the robbery to be committed and in which one Liew Eng Choy @ Eng Choy and Ho Chee Kuan @ Soh Kuan were to take part.

On October 11, 1980, the robbery was committed by both Liew Eng Choy and Ho Chee Kuan. On the same day, the jewellery taken in the robbery was brought to the accused for disposal by him.

It is clear from the recorded facts that both the dates and the facts of the case do not support the charge. The date upon which the alleged conspiracy had taken place was before September 10, 1980 and not on October 11, 1980 as referred to in the charge.

To my mind, the facts of this case do not disclose an offence of conspiracy. It may constitute some other offence in the Penal Code which I would not say in view of the Order I would make.

The learned Deputy Public Prosecutor admitted the charge was defective but said that it was not fatal and did not amount to a failure of justice. In my view, besides a defective charge, the facts do not support the charge of conspiracy and there are too many unsatisfactory features in this case which if allowed uncorrected would have caused injustice to the appellant who was then not represented by counsel. In these circumstances I would exercise my power of revision and set aside the conviction and sentence against the appellant and I order that a new trial be conducted by a different Magistrate.

Order accordingly.

Solicitors: *R.K. Menon & Co.*

PUBLIC PROSECUTOR v. WONG CHAK HENG

[A.Cr.J. (Chan J.) January 23, 1985]
[Kuala Lumpur – Federal Territory Criminal Appeal Nos. 134 & 135 of 1982]

Criminal Law & Procedure – Sentencing – Offences of theft of spare parts of motor vehicles – Fine of $200 & $300 respectively – Whether sentence inadequate – Sentence revised – Considerations of individual deterrence – Penal Code (F.M.S. Cap. 45), s. 379.

The appellant pleaded guilty in the Magistrate Court to two cases of theft *viz*, the theft of the spare tyre and sports rim of a Datsun 120Y on January 22, 1982 and the theft of the spare tyre together with the rim of a Ford Laser on February 1, 1982.

At the time of committing the offences the appellant was 23 years old and had had no previous convictions. Both cases were heard on the same day and the respondent was fined $200 and $300 respectively for the first and second offence. The Public Prosecutor appealed against the inadequacy of the sentence imposed on the respondent for both offences.

Held: allowing the appeal: (1) in ordinary circumstances petty theft would not attract any immediate sentence of imprisonment. However, when one considers the extent to which the stealing of motor-car parts and accessories is rife at the present day, then the courts inevitably must view such an offence as a serious crime;

(2) the public is entitled to be protected against such offenders and they are not likely to be protected if lenient sentences are passed. This is because offenders are not likely to be discouraged by sentences which do not involve loss of liberty;